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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JEREMIAH W. BALIK,

11 Plaintiff,

12 v.

13 SPRINT/UNITED MANAGEMENT
14 CO.; TIME WARNER CABLE, INC.;
15 TELEPHONE AND DATA
SYSTEMS, INC.; PATRICK M.
GAVIN, VP of Counsel; SPRINT,
INC.,

16 Defendants.

CASE NO. 16cv1106-WQH-BGS

ORDER

17 HAYES, Judge:

18 The matter before the Court is the “Motion – Additional Details Per Fed R C
19 24(a)(3)” (ECF No. 8) filed by Plaintiff Jeremiah W. Balik.

20 On May 9, 2016, Plaintiff, proceeding pro se, initiated this action by filing a
21 Complaint. (ECF No. 1). On May 9, 2016, Plaintiff also filed the motion to proceed
22 in forma pauperis (“IFP”). (ECF No. 2).

23 On May 25, 2016, the Court issued an Order denying the motion to proceed in
24 forma pauperis without prejudice on the grounds that Plaintiff did not provide the Court
25 with sufficient information. (ECF No. 3). The Order stated, “Plaintiff shall ... either
26 (1) pay the requisite \$400 filing fee, or (2) submit a more detailed motion to proceed
27 in forma pauperis.” *Id.* at 3.

28 On June 29, 2016, Plaintiff filed the “Motion – Additional Details Per Fed R C
12(a)(3).” The motion provides the Court with additional information regarding

1 Plaintiff's bank account balances and monthly spending. The Court construes the
2 motion as a motion to proceed in IFP, and considers the information in both motions to
3 proceed IFP in deciding whether to grant Plaintiff IFP.

4 **I. Motion to Proceed IFP**

5 All parties instituting a civil action, suit, or proceeding in a district court of the
6 United States, other than a petition for writ of habeas corpus, must pay a filing fee of
7 \$400.00. *See* 28 U.S.C. § 1914(a); S.D. Cal. Civ. L.R. 4.5. An action may proceed
8 despite a party's failure to pay only if the party is granted leave to proceed in forma
9 pauperis pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177
10 (9th Cir. 1999). "To proceed in forma pauperis is a privilege, not a right." *Smart v.*
11 *Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

12 In Plaintiff's affidavit accompanying the original motion to proceed in forma
13 pauperis, Plaintiff states that he is not currently employed. Plaintiff states that he
14 receives \$2,900 per month in VA benefits. Plaintiff states that he has a 2011 Toyota
15 Prius that he is still making payments on. Among other expenses, Plaintiff states that
16 his average monthly rent is \$2,015 and his monthly utilities cost \$350. Plaintiff states
17 that he spends at least \$800 on food, \$150 on clothing, \$35 on laundry and dry cleaning,
18 and approximately \$623 on transportation each month. In his most recent motion,
19 Plaintiff provided bank account records which indicate that as of June 7, 2016, Plaintiff
20 had \$1,217.28 in his Wells Fargo checking account, \$437.01 in his Wells Fargo savings
21 account, and \$163.52 in his Navy Federal Credit Union accounts.

22 The Court has reviewed the motions and accompanying documents and finds that
23 they are sufficient to show that Plaintiff is unable to pay the fees or post securities
24 required to maintain this action. The Court grants the motion to proceed IFP pursuant
25 to 28 U.S.C. § 1915(a).

26 **II. Initial Screening of Complaint**

27 A complaint filed by any person proceeding in forma pauperis pursuant to 28
28 U.S.C. § 1915(a) is also subject to mandatory review and sua sponte dismissal to the

1 extent it “is frivolous or malicious; fails to state a claim on which relief may be granted;
2 or seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C.
3 § 1915(e)(2)(B)(i)-(iii); *see Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (en
4 banc). The standard used to evaluate whether a complaint states a claim is a liberal one,
5 particularly when the action has been filed pro se. *See Estelle v. Gamble*, 429 U.S. 97,
6 97 (1976). However, even a “liberal interpretation . . . may not supply elements of the
7 claim that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673
8 F.2d 266, 268 (9th Cir. 1982). “[P]ro se litigants are bound by the rules of procedure.”
9 *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). Federal Rule of Civil Procedure 8
10 provides that “[a] pleading that states a claim for relief must contain ... a short and plain
11 statement of the claim showing that the pleader is entitled to relief...” Fed. R. Civ. P.
12 8(a). “[A] plaintiff’s obligation to provide the grounds of his entitlement to relief
13 requires more than labels and conclusions, and a formulaic recitation of the elements
14 of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
15 (quotation omitted).

16 Plaintiff named Sprint/United Management Co., Time Warner Cable, Inc., and
17 Telephone and Data Systems, Inc. as Defendants. Plaintiff alleges claims against
18 Defendants for racial discrimination pursuant to § 703(a)(1) of Title VII of the Civil
19 Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1). (ECF No. 1 at 3). The Complaint
20 alleges the following facts with regard to Plaintiff’s application for employment with
21 Defendants and Defendants’ actions in not hiring Plaintiff: “Plaintiff applied for
22 numerous jobs with Defendants, in numerous states [E.g., California, Illinois and
23 Wisconsin]. Plaintiff was denied employment in every situation due to the first cause
24 of action; discrimination [with pretext]” *Id.* The Complaint alleges that after
25 Plaintiff accepted an offer from Defendant [Sprint], “Plaintiff’s Sprint offer was
26 rescinded for no valid reason.” *Id.* at 5. The Complaint alleges that “Plaintiff applied
27 for positions Plaintiff was more than qualified for with Defendant in San Diego and Los
28 Angeles. Plaintiff received email replies that Defendant would not be moving on with

1 Plaintiff.” *Id.* at 8. The Complaint alleges that

2 Plaintiff interviewed and accepted an offer with TDS Telecom/Defendant
 3 at or around March 21, 2012 . . . Plaintiff received call from TDS . . . HR
 4 Specialist Nicole Jooranstad after signing offer letter and getting training
 5 start date that they needed to do additional background checking – call
 6 Plaintiff’s references. Nicole Joraanstad lied; she never called any of
 7 Plaintiff’s job references, one of which is US Senator Charles Grassley.
 8 Plaintiff called US Senator Grassley staffer . . . he confirmed he never
 9 received a call from Nicole Jooranstad.

10 *Id.* at 9. The Complaint alleges that

11 Plaintiff applied for/took assessments for numerous jobs with Time
 12 Warner Cable/Defendant, Inc. in the Los Angeles CSMA and San Diego
 13 CSMA on or about from October 2014 – May 2015 Plaintiff was
 14 never called for interview[s] and would only receive emails from Time
 15 Warner, Inc. stating that they are pursuing other candidates.

16 *Id.* at 17. The Complaint alleges that “either Congressman Fred Upton . . . or Mayor
 17 Rahm Emanuel or BOTH abused their authority and called in a favor to Time Warner,
 18 Sprint et al to block and prevent Plaintiff from getting interviewed and hired at
 19 telecommunications companies.” *Id.* at 19.

20 The Court concludes that the allegations in the Complaint are vague, conclusory,
 21 or both. *See Twombly*, 550 U.S. at 555 n. 3 (“Rule 8(a)(2) . . . requires a ‘showing,’
 22 rather than a blanket assertion, of entitlement to relief. Without some factual allegation
 23 in the complaint, it is hard to see how a claimant could satisfy the requirement of
 24 providing not only ‘fair notice’ of the claim, but also ‘grounds’ on which the claim
 25 rests.”). Plaintiff’s Complaint does not allege any facts to support an inference that
 26 Defendants discriminated against Plaintiff based on his race by declining to employ
 27 him. Many of the factual allegations in the Complaint are not related to Plaintiff’s
 28 claim for employment discrimination or alleged wrongdoing by the named Defendants.

The Court concludes that the Complaint must be dismissed because it fails to
 state a claim on which relief can be granted. The Complaint is dismissed pursuant to
 28 U.S.C. § 1915(e)(2)(B)(I).

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1 **III. Conclusion**

2 IT IS HEREBY ORDERED that the motion to proceed in forma pauperis (ECF
3 No. 8) is granted. The Complaint (ECF No. 1) is dismissed without prejudice.

4 DATED: August 2, 2016

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6 **WILLIAM Q. HAYES**
7 United States District Judge
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